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In The

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1930

NO. 195

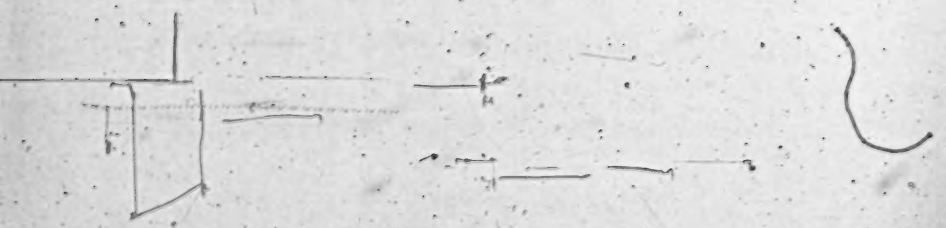
COLUMBUS & GREENVILLE RAILWAY CO., ET AL., APPELLANTS,

VS.

W. J. MILLER, STATE TAX COLLECTOR, Etc., APPELLEE.

STATEMENT OF JURISDICTION

Wm. H. WATKINS,
A. F. GARDNER, Sr.,
R. C. STOVALL,
A. F. GARDNER, Jr.,
H. T. ODOM,
Attorneys for Appellants.



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COLUMBUS & GREENVILLE RAILWAY CO., ET AL., APPELLANTS, VS.

W. J. MILLER, STATE TAX COLLECTOR, Etc., APPELLEE.

STATEMENT OF JURISDICTION

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF MISSISSIPPI

Appellants submit, in compliance with Rule 12, Revised Rules of the Supreme Court of the United States, adopted June 5, 1928, the following statement of the basis of this Court's jurisdiction to review, on appeal, the judgment of the Supreme Court of the State of Mississippi.

A.

STATUTORY PROVISION SUSTAINING JURISDICTION.

The jurisdiction of this Court is invoked under Section 237 (a) Judicial Code, as amended by the Act of February 13, 1925, Chapter 229, 43 Stat. 937, being Section 344, Judicial Code, U. S. Code Ann., Title 28.*

*All references to the record are to the pages of the certified unprinted record prepared by the Clerk of the Supreme Court of the State and on file with the Clerk of the Court. The record has not yet been printed.

B.

DATE OF JUDGMENT AND DATE OF APPLICATION FOR APPEAL.

The decree of the Supreme Court of the State of Mississippi affirming the judgment of the Circuit Court of Montgomery County, Mississippi, appealed from, was entered April 21st, 1930. R. 76. 127 So. 784,

The petition for appeal was presented on the 23rd day of May, 1930, R. 79; allowed on the 23rd day of May, 1930, R. 85.

C.

NATURE OF THE CASE AND RULING BELOW.

The Mississippi Levee District was organized Chapter 1, Mississippi Laws of 1865. The territory comprised therein included the counties of Washington, Bolivar and Issaquena. Due to the creation of new counties, it now also comprises parts of Sharkey, Warren and Humphreys Counties.

Section 237 of the Mississippi State Constitution is in the following language:

> "Section 237. The legislature shall have full power to provide such system of taxation for said

levee districts as it shall, from time to time, deem wise and proper."

The Columbus & Greenville Railway Company is a Mississippi corporation, hereinafter referred to as the company, operating a line of railroad from Columbus, Mississippi, in a westerly direction to Greenville, Washington County, Mississippi, a distance of 168 miles. It runs across the levee district at right angles from the Mississippi River a distance of 18.41 miles.

Section 1, Chapter 282, Mississippi Laws of 1914, is in the following language:

"Section 1. Be it enacted by the Legislature of the State of Mississippi, that Chapter one hundred and twenty-five of the Acts of 1908 be and the same is hereby amended so as to read as follows:

"That Chapter 7 of the Acts of 1886 be and the same is hereby amended so as to read as follows:

"That for the purpose of contributing to the expense of building, maintaining and repairing levees in the Mississippi levee district and of paying the debts and liabilities incurred therefor, by the Board of Mississippi Levee Commissioners, the following tax is hereby levied and assessed upon all railroads and parts of railroads lying and situated in the said levee district, to-wit: Upon each and every mile of the main or trunk line of all broad or standard guage railroads, not including side tracks or switches, the sum of $350.00 per annum; upon each and every mile of

narrow gauge railroad or railroads of less width than standard guage, not including side tracks or switches, the sum of $87.50 per annum; and upon each and every mile of broad or standard guage railroads, not used and operated as a main trunk line, but constituting and used as a feeder to a branch or a main or trunk line with some other system, the sum of $210.00 per annum; provided that no railroad or branch railroad shall be subject to taxation under this act while the same is in process of construction, but if any part thereof shall be used for profit, that part so used shall be taxed, although the whole of said railroad or branch may not be finished."

Section 1, Chapter 259, Mississippi Laws of 1926, is in the following language:

"That for the purpose of contributing to the expense of building, maintaining and repairing levees in the Mississippi levee district, and of paying the debts and liabilities incurred thereof, by the Board of Mississippi Levee Commissioners, the following tax is hereby levied and assessed upon all railroads and parts of railroads lying and situated in the said levee district, to-wit: Upon each and every mile of the main or trunk line of all broad or standard guage railroads, not including side-tracks or switches, the sum of $350.00 per annum; upon each and every mile of narrow guage railroad or railroads of less width than standard guage, not including side tracks or switches, the sum of $87.50 per annum; and upon each and every mile of broad or standard guage railroads, not used and operated as a main or trunk line, but constituting and used as a feeder or a branch of a main or trunk line, or to connect such main or trunk line

with some other system, the sum of $210.00 per annum; provided, that no railroad or branch railroad shall be subject to taxation, under this act while the same is in process of construction, but if any part hereof shall be used for profit, that part so used shall be taxed, although the whole of said railroad or branch may not be finished; provided further that the tax per mile per annum on the main line of any railroad company which does not own in excess of twenty-five miles of railroad in the Mississippi levee district shall be $50.00 per annum."

That for the years 1926 and 1927, since the main line of the Columbus & Greenville Railway Company did not exceed twenty-five miles in the levee district, it paid to the tax-collector thereof the sum of $50.00 per mile per annum, in accordance with the provisions of the Act of 1926. R. 60.

The appellee, W. J. Miller, State Tax-Collector, for the use of the Mississippi Levee District, is an officer whose duty it is under the statutes of the State of Mississippi to enforce payment of past due taxes and other obligations of the State of Mississippi, or any subdivision thereof, including the Mississippi Levee District.

Upon the 31st day of July, 1928, the state tax-collector filed suit in the Circuit Court of Montgomery County, Mississippi, for the recovery of privilege taxes payable to the Mississippi Levee District under Chapter 282, Mississippi Laws of 1914, aforesaid, at the rate of $350.00 per mile. The plaintiff alleged that Chapter 259, Mississippi Laws of 1926, was invalid, in that the same was adopted by the Leg-

islature of the State of Mississippi in disregard of Section 234 of the Constitution of the State of Mississippi. R. 3.

To which declaration, the company demurred on the ground that the plaintiff's declaration revealed that it had discharged all liability for privilege taxes imposed upon it by Chapter 259, Mississippi Laws of 1926, which repealed Section 1, Chapter 282, Mississippi Laws of 1914.

The trial court sustained the demurrer and dismissed the action.

On appeal by the state tax-collector to the Supreme Court of the State of Mississippi, the court held that Chapter 259, Mississippi Laws of 1926, violated the Fourteenth Amendment to the Constitution of the United States, and was void, and that the company owed to the levee district the mileage tax provided in Chapter 282, Mississippi Laws of 1914. The case is reported, *Miller, State Tax Collector, vs. Columbus & Greenville Railway Co.*, 122 So. 366, 154 Miss. 317. The court used the following language at page 323:

> "Chapter 259, Laws of 1926, divides railroads into two classes: First, railroads not having more than twenty-five miles of railroad in the levee district; and, second, all other railroads therein. The ground of the appellant's contention is that this classification has no reasonable relation to the purpose for which the statute was enacted, but is arbitrary and unreasonable, and therefore in violation of the due process and equal protection clauses of the Fourteenth Amendment to the Federal Constitution. This is so manifestly correct that the

citation of authorities therefor would be supererogatory. It will not be necessary for us to decide whether this results simply in the proviso of Chapter 259, Laws of 1926, being void, or in the whole statute being void, for in either event the tax which the appellee will have to pay will be the same, that is, three hundred and fifty dollars per annum on each mile of its railroad in the levee district."

The case was remanded to the Circuit Court of Montgomery County, Mississippi, and, among other pleas, the company pleaded that Chapter 259, Mississippi Laws of 1926, was consistent with the Fourteenth Amendment to the Constitution of the United States and a valid law thereunder. R. 8.

Said plea contained the following additional language:

"The said defendant having discharged its liabilities to said Mississippi Levee District under said Act, now sets up, alleges and avers that it has acquired, and now has, under the Fourteenth Amendment to the Constitution of the United States, the right, privilege and immunity from further liability for taxes to the said Mississippi Levee District."

The Company's plea further alleged that to hold Chapter 259, Laws of 1926, invalid and enforce Chapter 282, Mississippi Laws of 1914, under the facts and circumstances shown by the testimony, against the company, would render such last mentioned act violative of the Fourteenth Amendment to the Constitution of the United States, in that the same would deprive the company of its property without due process of law, and deny to it the equal protection of the law. R. 14.

The case went to trial on the facts, and it appeared that there were but two railroads at the time of the passage of the Act of 1926 in the levee district operating standard gauge main lines:

(a) The Yazoo & Mississippi Valley Railroad Company, an interstate carrier, running from New Orleans in the State of Louisiana to Memphis in the State of Tennessee, forming part of the great Illinois Central System. That the said Yazoo & Mississippi Valley Railroad Company operated its main line north and south through the levee district, parallel with the Mississippi River, a distance of 117.15 miles; that, owing to the exposure to the flood waters of the Mississippi River, it required and had a road bed six feet higher and four feet wider than that of the Columbus & Greenville Railway Company; that it had and required heavier rails, depots, shops and buildings, all of which were modern in every respect.

(b) The Columbus & Greenville Railway Company, an intrastate railroad, running through the district across Washington County, Mississippi, to the Mississippi River, at right angles from the Mississippi River, a distance of 18.41 miles, the equipment of which was old, dilapidated, worn out, its locomotives not having exceeding one-fourth of the capacity of the locomotives of the Yazoo & Mississippi Valley Railroad Company.

The company also introduced other evidence, tending to show the substantial difference between the two railroads, which were the only two affected; and, also, introduced other evidence tending to show substantial differences which would exist in respect to the operation of any rail-

road at right angles from the river and one running through the entire district parallel with the river. R. 24; R. 46-50.

Under Chapter 118, Mississippi Laws of 1926, being Section 7740 of Hemingway's Mississippi 1927 Code, the Railroad Commission of the State of Mississippi was authorized to classify railroads for payment of state privilege taxes. A copy of the Act is made appendix hereto.

The company offered to prove that under this act, the Railroad Commission of the State of Mississippi classified the Yazoo & Mississippi Valley Railroad Company as a first class railroad and classified the Columbus & Greenville Railway as a third class railroad.

Objection was made by the appellee to the introduction of the testimony, and the same was sustained. R. 51.

The company also offered to prove that the tax commissioners of the State of Mississippi, in assessing railroad property in the State of Mississippi for ad valorem taxes, fixed the valuation of the company's property at one thousand dollars per mile; while that of the Yazoo & Mississippi Valley Railroad Company was assessed at thirty-two thousand dollars per mile. The admission of this testimony was likewise objected to by the appellee and excluded. Judgment was entered against the company for taxes in accordance with the provisions of the act of 1914 for the full amount sued for; that is to say, a tax of $350.00 per mile, crediting the company with $50.00 per mile paid by it. R. 18.

The Columbus & Greenville Railway Company prose-

cuted its appeal to the Supreme Court of the State of Mississippi, and by appropriate assignment of error, reasserted the validity of the Act of 1926 under the Fourteenth Amendment to the Constitution of the United States, and that said railroad company, appellant, was deprived of its property without due process of law and denied the equal protection of the law by declaring said Act of 1926 invalid and enforcing against it Chapter 282 of the Mississippi Laws of 1914. R. 66.

The judgment of the Circuit Court of Montgomery County, Mississippi, complained of was affirmed. R. 76.

The court delivered the following opinion, reported 127 So. 784:

> "This case is ruled by the opinion rendered on the former appeal herein, (154 Miss. 317, 122 So. 366), to which we adhere, and the evidence excluded, if competent, as to which we express no opinion, could not have changed the result. Affirmed."

Appellants A. T. Stovall and A. F. Gardner, Sr., became sureties on the appeal bond of the railway company to the Supreme Court of the State of Mississippi from the judgment rendered in the Circuit Court of Montgomery County, Mississippi.

There is pending in this case a petition for writ of certiorari, reference to which is made in aid of this statement. It was, in the court below, and is the contention of the appellants here that Chapter 282, Mississippi Laws of 1914, as enforced and construed by the Supreme Court of the State

of Mississippi in this case, violated the Fourteenth Amendment to the Constitution of the United States, in that the appellants were deprived of their property without due process of law and denied the equal protection of the law, for that:

(1) The tax imposed was for the construction and maintenance of a local improvement, to-wit, the levees along the banks of the Mississippi River, within the Mississippi Levee District, and that the benefits received by the Columbus & Greenville Railway Company, under the facts and circumstances shown and offered to be shown in this case are so utterly disproportionate to the benefits had and received by the Yazoo & Mississippi Valley Railroad Company that there is no reasonable presumption that substantial justice will be done; upon the other hand, the application of a tax of $350.00 per mile to the Columbus & Greenville Railway Company, under the facts and circumstances in this case, is arbitrary, discriminatory and unjust, having no relation to the comparative benefits received by it.

(2) The tax levied in this case for the purpose of creating and maintaining local improvement provides no judicial method by which the Columbus & Greenville Railway Company might secure a determination of the proportionate part of the tax to be borne by it. The Yazoo & Mississippi Valley Railroad Company is an interstate carrier, operating parallel with the Mississippi River, 117 miles of the most modern and superior construction, and having and maintaining, largely exposed to the flood waters of the Mississippi River for its entire length through the district railroad properties of vast and enormous values. Upon the other hand,

the Columbus & Greenville Railway Company is of inferior, antiquated construction, operating at right angles to the Mississippi River, so that the protection which it would receive from the levees on the Mississippi River, and the values of its railroad property protected thereby, were so out of proportion to the only other standard gauge main line railroad operating in the levee district that the placing of the same mileage tax upon the Columbus & Greenville Railway Company as was assessed against the Yazoo & Mississippi Valley Railroad Company was discriminatory and arbitrary, and that some statutory judicial method should have been provided so that it might secure a determination of its proportionate part of the tax.

We call the Court's attention to the fact that the State Board of Tax Assessors, in valuing property for ad valorem taxes, assessed that of the appellant railroad company at only 1/32 part of the Yazoo & Mississippi Valley Railroad Company. See agreement of counsel hereto attached.

We further call attention of the Court to the fact that the Railroad Commission of the State of Mississippi, having authority under the law to classify railroads for privilege tax under the law, fully appreciated the inferior construction and value of the appellant's railroad, and placed it in the third class of railroads, while the Yazoo & Mississippi Valley Railroad was placed in the first class. See Chapter 118, Mississippi Laws of 1926, Appendix.

The Supreme Court of the State of Mississippi held that the determination of the Railroad Commission on the subject was binding on it. See *N. M. & C. R. R. Co., vs. State* 70 So. 355, 110 Miss. 290.

Yet, under the statute before the Court, providing funds for the construction and maintenance of a local improvement, the court strikes down the Act of 1926, and arbitrarily and of its own motion, places the Columbus & Greenville Railway Company in the same class with the Yazoo & Mississippi Valley Railroad Company. It is the contention of the appellant that in determining the constitutional question, facts offered to be proved will be treated as having been proved. *Fairmont Creamery Co., vs. Minnesota*, 274 U. S. 1, 71 L. Ed. 893.

D.

CASES SUSTAINING JURISDICTION.

Road Improvement District vs. Mo. Pac. R. R. Co., 274 U. S. 188, 71 L. Ed. 992; *Kansas City Sou. R. R. Co. vs. Road Improvement Dist.*, 256 U. S. 658, 65 L. Ed. 1151; *Louisville Gas & Electric Co., vs. Coleman*, 277 U. S. 32, 72 L. Ed. 770; *Airway Electric Corp. vs. Day*, 266 U. S. 71, 69 L. Ed. 169; *Royster Guano Co. vs. Virginia*, 253 U. S. 412, 64 L. Ed. 989; *Schlesinger vs. Wisconsin*, 270 U. S. 230, 70 L. Ed. 557; *Fairmont Creamery Co. vs. Minnesota*, 274 U. S. 1, 71 L. Ed. 893; *Myles Salt Co. vs. Board of Commissioners*, 239 U. S. 478, 60 L. Ed. 392; *Saunders vs. Shaw*, 244 U. S. 317, 61 L. Ed. 1163; *Gast R. & I. Co. vs. Granite Co.*, 240 U. S. 55, 60 L. Ed. 523; *Ohio Valley Water Co. vs. Borough*, 253 U. S. 287, 64 L. Ed. 908; *Bluefields Water Works vs. Service Commission*, 262 U. S. 679, 67 L. Ed. 1176.

Respectfully submitted,
Wm. H. WATKINS,
A. F. GARDNER, Sr.,
R. C. STOVALL,
A. F. GARDNER, Jr.,
H. T. ODOM,
Attorneys for Appellants.

APPENDIX.

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1930

NO. 195.

COLUMBUS & GREENVILLE RAILWAY CO. ET AL., PETITIONERS.

VS.

W. J. MILLER, STATE TAX COLLECTOR.

AGREEMENT OF COUNSEL TO DISPENSE WITH PRINTING CERTAIN PORTIONS OF THE RECORD

In order to prevent the printing of certified copies of the assessment rolls of the Mississippi State Tax Commission forming part of the record in this case, it is agreed that for the years 1926, 1927 and 1928, the Mississippi State Tax Commission assessed for ad valorem taxes the railroad of the Columbus & Greenville Railway Company in the Levee District at one thousand dollars ($1,000.00) per mile; that the railroad of the Yazoo & Mississippi Valley Railroad Company was assessed for ad valorem taxes in the Mississippi Levee District at thirty-two thousand dollars, ($32,000.00) per mile; that at the trial of this cause in the Circuit Court of Montgomery County, Mississippi, the plaintiff objected to the introduction of said assessment rolls as incompetent, immaterial and irrelevant; that such testimony was excluded by the court and the action of the Circuit Court of Montgomery County, Mississippi, was affirm-

ed by the Supreme Court of the State of Mississippi in the judgment appealed from, and that such assessment roll be not printed with the record.

W. H. WATKINS,
Attorney for Petitioner
FRANKLIN, EASTERLING & ROSENTHAL,
By SIMON ROSENTHAL,
Attorneys for Respondent.

APPENDIX.

Chapter 118, Miss. Laws, 1926, Sec. 7740, Hemingway's 1927 Code.

7740. Railroads.—186. Section 3856 of Chapter 114 of the Code of 1906, levying privilege taxes on railroads, be and the same is hereby amended so that for the purpose of levying a privilege tax on railroads, such railroads are divided into four classes: 1st, 2nd, 3rd and narrow gauge, and privilege taxes levied on them as follows:

On each railroad of the first class, per mile	$45.00
On each railroad of the second class, per mile	25.00
On each railroad of the third class, per mile	10.00
On each narrow guage railroad, per mile	2.50

The railroad commission shall, annually, on or before the first Monday in August, classify the several railroads according to their charter and the gross earnings of each, and the privilege taxes thereon shall be paid on or before the first day of December, and the findings of the said railroad commission shall be certified to the auditor of public accounts and the chancery clerk of the county through which

each road or roads run; and any person or persons, natural or artificial, who shall exercise any of the privileges taxed herein, without first paying the tax and procuring the tax or license, as required by law, shall be subject to the pains and penalties imposed by Section 3894 of the Code of 1906, and to such other pains and penalties as may be otherwise provided by law. (Laws 1926, Chap. 118. In effect April 30, 1926).

IN THE SUPREME COURT OF THE UNITED STATES.

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NO. 195.

COLUMBUS & GREENVILLE RAILWAY COMPANY

VS.

W. J. MILLER, STATE TAX COLLECTOR

AGREEMENT OF COUNSEL.

It is agreed by and between attorneys representing the appellant and appellee in the above-entitled cause that the Columbus & Greenville Railway Company may have one week's additional time within which to file its statement of jurisdiction.

Signed, this the 8th day of July, 1930.

Wm. H. Watkins,
Attorney for Appellant.
Franklin, Easterling & Rosenthal,
Attorneys for Appellee.